In the Supreme Court of the United States

October Term, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONSE OF APPELLEES TO MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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This memorandum is submitted in response to the memorandum of the Solicitor General filed with this Court on August 24, 1977 following the Court's order of April 18, 1977 inviting the Solicitor General to express the views of the United States in this case.

QUESTIONS DISCUSSED IN THIS MEMORANDUM

The sole purpose of this memorandum is to reply briefly to the positions urged by the Solicitor General in support of his recommendation that probable jurisdiction be noted in this matter. The Solicitor General argues that the Minnesota Pension Act is not preempted because

(1) The Act is excepted from preemption as an ex-

ercise of the state's police power (Solicitor General's Memorandum 8), or as a local health and safety regulation, (Solicitor General's Memorandum 13), and

(2) Congress in enacting The Welfare and Pension Plans Disclosure Act of 1958, 29 U.S.C. §301, ("Disclosure Act") left to the states authority to change the substantive provisions of collectively bargained pension plans. (Solicitor General's Memorandum 9).

ARGUMENT

1. The Minnesota Pension Act Is Not Exempt From Federal Labor Law Preemption

The Solicitor General in his memorandum argues that state legislation enacted under a state's police power is excepted from the preemptive effect of federal labor law. He states that federal labor policy "is not intended to preclude the states from the exercise of their police powers" and that states are free to "regulate the employment relationship" irrespective of agreements reached through the federally sanctioned process of collective bargaining (Solicitor General's Memorandum 8). The Solicitor General's position is clearly an incorrect statement of the status of labor law preemption.

The Solicitor General relies upon two 1916 cases upholding the constitutionality of state workmen's compensation laws (Solicitor General's Memorandum 8-9). The issue now before the Court, however, is one of federal labor law preemption. A state law which is in conflict with federal labor law or policy is preempted. Where such a conflict with federal law exists, the police power of the state ceases. This principle has long been recognized by this Court.

In *Erie R.R. Co. v. New York*, 233 U.S. 671 (1914), the Court held that a New York statute setting lower maximum hours of work for railroad telegraph operators than the maximum hours permitted by the federal Hours of Service Act, being in conflict with federal law, could not be upheld as an exercise of the state's police power. The Court said:

> "We considered it elementary that the police power of a state could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power." (233 U.S. at 682)

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), a leading case on labor law preemption, the Court expressly held that the police power of the state to prohibit a union shop or closed shop existed only in the absence of conflicting federal legislation and that the Railway Labor Act wiped out that police power (351 U.S. at 233).[1]

The Court in *California v. Taylor*, 353 U.S. 553 (1957), made it clear that the right of a state to regulate employment relationships is subject to labor law preemption. In that case, the state of California argued that "Congress has no constitutional power to interfere with the 'sovereign right' of a State to control its employment relationships on a state-owned railroad engaged in interstate commerce." (353 U.S. at 568). This Court held that such a state right could not stand against conflicting provisions of the Railway Labor Act.

The decision of this Court in *De Canas v. Bica*, 424 U.S. 351 (1976), to which the Solicitor General refers, did

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[1]See also *Long Island R. Co. v. Dept. of Labor*, 256 N.Y. 498, 177 N.E. 17, 23-24 (1931).

not involve labor law preemption,[2] and in no way changed that doctrine under which states cannot interfere with the substantive provisions of collective bargaining agreements. That *De Canas* did not affect labor law preemption is shown by the fact that later in the same term this Court decided *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), a major labor law preemption case, without even citing *De Canas*. In fact, *Machinists* expressly reaffirmed *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), the case upon which the Eighth Circuit's opinion is based.

References to state minimum wage, maximum hour and child labor laws do not support the Solicitor General's position. Section 18(a) of the Fair Labor Standards Act, 29 U.S.C. §218(a), expressly grants to states and municipalities the right to promulgate and enforce laws establishing higher minimum wages, lower maximum workweeks and higher child labor standards than those established under the Fair Labor Standards Act. In the absence of such a grant, as clearly established from the authorities cited above, a state statute controlling wages, hours or working conditions in conflict with a collective bargaining agreement negotiated under the mandate of federal labor law is preempted.

What this Court has recognized is a narrow exception to the preemption doctrine for "local health or safety regulation." In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court, in holding that states could not

[2] *De Canas* involved a claim that a California statute regulating the employment of illegal aliens was preempted by the Immigration and Nationality Act, 8 U.S.C. §1101 (INA). Two comments will serve to distinguish the case. (1) The Court recognized (424 U.S. at 359, n.7) that nothing remotely resembling the NLRA scheme of regulation was to be found in the INA. (2) The Court noted (424 U.S. at 361-2) that federal legislation had expressly approved state legislation regulating employment of illegal aliens.

interfere with the substantive terms of agreements established by collective bargaining under the mandate of the National Labor Relations Act, recognized that it did not have before it "a case of a collective bargaining agreement in conflict with a local health or safety regulation." (358 U.S., at 297).

The scope of this exception, discussed in detail in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 136-37 (1976), is limited to local regulation of picket line violence, coercion, destruction of property or other such conduct which involves interests "deeply rooted in local feeling and responsibility." *San Diego Unions v. Garmon*, 359 U.S. 236, 244 (1959). It does not include the type of regulation attempted in the Minnesota Pension Act.

Even when the Solicitor General addresses, in a subsequent section of his discussion, the limited exception referred to in *Oliver*, he does not state the law correctly. The Solicitor General without explanation defines the exception as a "health, safety *and welfare*" exception (Solicitor General's Memorandum 13). This gratuitous expansion of the exception is, of course, an attempt to support a claim that the health and safety exception is applicable to legislation dealing with "economic welfare" of citizens of a state.[3]

Pensions have been held to be both "wages" and "other conditions of employment" as those terms are defined in the National Labor Relations Act. *Inland Steel Company v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949). It is common knowledge that wage increases may be granted in lieu of an increase

[3] The argument that the health and safety exception applies to legislation affecting "economic welfare" was urged by appellant both in the District Court and the Court of Appeals for the 8th Circuit, and was rejected by both courts. That argument was not advanced again in the Jurisdictional Statement.

in fringe benefits such as pensions, paid vacations, and paid holidays, or a fringe benefit may be given in lieu of another fringe benefit or of a larger wage increase. Clearly wages, pensions, vacation pay, holiday pay and numerous other provisions of collective bargaining agreements are all part of the economic package negotiated in such an agreement and, of course, like all elements of that package, have an effect on the economic welfare of employers or retirees. See *Craig v. Bemis Company, Inc.*, 517 F.2d 677, 684 (5th Cir. 1975). If the health and safety exception to preemption were considered broad enough to include an employee's economic welfare, virtually the whole range of mandatory subjects for collective bargaining would be subject to state interference and control. The exception would then engulf the rule.

If legislation affecting economic welfare of individuals were exempt from federal labor law preemption, this Court in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), would have held state antitrust laws, which materially affect the economic welfare of citizens, exempt from federal labor law preemption.

The cases cited earlier in this memorandum make it clear that a state statute establishing wages in conflict with a collective bargaining agreement negotiated under the mandate of federal law is preempted. See also *United Air Lines Inc. v. Industrial Welfare Commission*, 211 Cal. App. 2d 729, 28 Cal. Reptr. 238 (1963), reviewing in detail the authorities on the subject and holding that state regulation of wages and fringe benefits is not exempt from labor law preemption as a health and safety regulation.

The attempt of the Solicitor General to treat the Minnesota Pension Act as a health or safety regulation is unsupported by any authority and is completely at odds with the well established doctrine of federal labor law preemption.

2. The Disclosure Act Does Not Support Appellant's Position

The Solicitor General argues (Solicitor General's Memorandum 9-13) that Congress in the Disclosure Act left to the states the power to change substantive terms of negotiated pension plans.

This argument has been dealt with and answered in Appellees' Motion to Dismiss or Affirm (pp. 11-15), but further comment is made here in view of the Solicitor General's reliance upon an incorrect premise.

The Solicitor General does not argue that the Disclosure Act ceded to the states the power to change substantive terms of negotiated pension plans, since "the scope of the bill [the Disclosure Act] is limited to disclosure and reporting and does not go into the field of regulation". H.R. Rep. No. 2283, 85th Cong. 2d Sess. (1958), 1958 U.S. Code Cong. and Admin. News 4181, 4189.

The Solicitor General does argue that if the Disclosure Act did not leave to the states the power to change substantive terms of pension agreements, "then it must have taken such power away from the states." (Solicitor General's Memorandum 11-12, n.12.) It is thus the position of the Solicitor General that, prior to passage of the Disclosure Act, states had the power to change substantive terms of collectively bargained pension plans. This premise is incorrect and the Solicitor General's argument must fail.

The Disclosure Act became law in 1958. At that time both the Railway Labor Act and the National Labor Relations Act had been in effect for many years. Prior to enactment of the Disclosure Act, this Court had clearly enunciated the doctrine of labor law preemption under which a collective bargaining agreement made pursuant to the mandate of federal labor law could not be altered

by state law. *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956); *California v. Taylor*, 353 U.S. 553 (1957). *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), simply applied to the National Labor Relations Act the labor law preemption doctrine enunciated in *Hanson*, and the Court expressly relied upon *Hanson* for its holding. 358 U.S. at 296-297.

Consequently, when the Disclosure Act was enacted, states did not have the power to change substantive terms of collective bargaining agreements, and the Disclosure Act did not cede power to the states. The Disclosure Act did, of course, leave to the states "the detailed regulations relating to insurance, trusts and other phases of their operations" (S. Rep. No. 1440, 85 Cong. 2d Sess. 19 (1958), 1958 U.S. Code Cong. and Admin. News 4137, 4153-4), but that regulatory responsibility, in the face of the well established doctrine of federal labor law preemption, did not include the right to interfere with the substantive terms of collective bargaining agreements.

CONCLUSION

Collective bargaining is the cornerstone of the national labor policy.[4] It is the teaching of this Court in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), that "the goal of federal labor policy . . . is the promotion of collective bargaining," 358 U.S. at 295, and that a state statute may not "frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith towards solving . . ." 358 U.S. at 296. These principles were expressly reaffirmed by this Court less than a year and a half ago in *Lodge 76, Machinists v. Wis-*

[4] By express provision of the National Labor Relations Act, "[i]t is declared to be the policy of the United States to . . . (encourage) the practice and procedure of collective bargaining . . ." 29 U.S.C. §151.

consin Employment Relations Commission, 427 U.S. 132 (1976).

The Solicitor General argues that the states may exercise their "police power" to " 'regulate the employment relationship' to provide workers within the states with an assurance of economic security . . ." However valid such legislation might be otherwise such legislation cannot be applied in a collective bargaining setting without destroying the very fabric of collective bargaining itself. The argument advanced by the Solicitor General is totally at odds with the principles of *Oliver*. That argument cannot be accepted unless this Court is prepared to overrule *Oliver*.

As noted by the Solicitor General, the issue before the Court is one which will not arise again (Solicitor General's Memorandum 9 n.10, 14). The Employee Retirement Income Security Act of 1974 (ERISA) has preempted state laws relating to "any [covered] employee benefit plan." 29 U.S.C. §1144. The Minnesota Pension Act has become obsolete. Under these circumstances, and because the Court of Appeals correctly reflects the teaching of *Oliver*, this Court should dismiss this appeal or, in the alternative, affirm the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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